

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

BRET AND KATHRYN THURMAN,
Petitioners,

v.

SAN JUAN COUNTY,
Respondent,
and
FRIENDS OF THE SAN JUANS
Intervenor.

CASE No. 17-2-0001

ORDER ON MOTION TO DISMISS

This matter comes before the Board pursuant to San Juan County's Motion to Dismiss¹ to which the Petitioners responded on March 6, 2017.²

I. ANALYSIS AND DISCUSSION

The Growth Management Act (GMA) establishes the limited jurisdiction of the Board and it may only exercise the powers so conferred. Compliance with the procedural requirements of the GMA is necessary in order to invoke the Board's jurisdiction. Those requirements are met when a person with standing, as defined by the GMA:

1. Files a petition for review including a detailed statement of the issues presented for Board resolution;
2. Files the petition for review within 60 days following publication of adoption by the adopting jurisdiction's legislative body;

¹ Filed February 23, 2017.

² Petitioners' Response to Respondent's Motion to Dismiss.

1 3. Alleges in the petition for review that the action taken by the jurisdiction fails to
2 comply with GMA requirements.³

3 While the Board rarely entertains dispositive motions, a motion challenging the
4 timeliness of the filing of a petition for review is appropriate as it questions the Board's
5 jurisdiction.⁴ In the matter presented, San Juan County argues that the Petition for Review
6 filed by Bret and Kathryn Thurman is not timely under RCW 36.70A.290(2).
7

8 In this matter, the Petitioners have challenged the County's adoption of Ordinance
9 No. 11-2016 (Ordinance). San Juan County adopted the Ordinance in order to achieve
10 compliance following the Board's Final Decision and Order in Case No. 16-2-0001. There,
11 the Board found and concluded the County had violated the GMA in de-designating forest
12 natural resource acreage owned by the Petitioners Thurman. Specifically, the Board found:
13

14 San Juan County failed to include and consider mandated criteria for de-
15 designating forest resource lands. The adoption of Ordinance No. 20-2015
16 did not comply with RCW 36.70A.170 and RCW 36.70A.130(1)(d).

17 The Board remanded the Ordinance to San Juan County and provided it with time to
18 achieve compliance. On compliance, the County opted to repeal the Ordinance through the
19 adoption of Ordinance 11-2016, the ordinance challenged in this case.

20 This matter involves four parcels totaling approximately 30 acres owned by the
21 Petitioners Thurman located on Orcas Island. Those parcels had been designated by San
22 Juan County as forest natural resource lands pursuant to RCW 36.70A.170. The Thurmans
23 requested de-designation and the County did so in 2015 leading to a successful challenge
24 in Case No. 16-2-0001.
25

26 San Juan County contends repeal of the Ordinance simply returned the Thurmans'
27 property to its prior designated status, a status it had since its original designation in 1998.
28 The County contends any challenge to the original designation needed to have been filed
29 within 60 days of the lands' designation in 1998.
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³ RCW 36.70A.280 and RCW 36.70A.290.

⁴ WAC 242-03-555.

1 The Petitioners go to great lengths in arguing repeal constituted a comprehensive
2 plan amendment subject to challenge, their goal ultimately being to achieve de-designation
3 of their properties. The County, on the other hand, had at least two compliance options: 1)
4 to conduct a County or region-wide analysis of its forest resource lands, or 2) repeal of its
5 earlier de-designation. It chose the latter. The Record makes it clear that the County
6 intends to conduct the County/region-wide analysis at a future date and that may very well
7 address the Thurmans' concerns. However, in this instance, repeal merely returned the
8 property to its earlier designation and did not constitute a challengeable comprehensive
9 plan amendment. As the County observes, repeal serves to "abrogate or repeal" a
10 previously existing law. The GMA grants the Board jurisdiction to consider amendments of
11 comprehensive plans and development regulations but not repeal of the same in order to
12 achieve compliance. The Thurmans' current challenge is untimely.
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15 II. ORDER

16 San Juan County's Motion to Dismiss is Granted.

17 DATED this 24th day of March, 2017.

18
19 _____
20 William Roehl, Board Member

21
22 _____
23 Nina Carter, Board Member

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25 _____
26 Raymond L. Paoella, Board Member

27 **Note: This is a final decision and order of the Growth Management Hearings Board**
28 **issued pursuant to RCW 36.70A.300.⁵**

29 _____
30 ⁵ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
31 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.
32 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be
served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC
242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the
Growth Management Hearings Board is not authorized to provide legal advice.